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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,574	11/13/2003	David S. Ruch	10031US	8790
5073	7590	01/31/2007	EXAMINER	
BAKER BOTTS L.L.P.			ARAJ, MICHAEL J	
2001 ROSS AVENUE				
SUITE 600				
DALLAS, TX 75201-2980				
			ART UNIT	PAPER NUMBER
			3733	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		01/31/2007	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/31/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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ptomail1@bakerbotts.com

**Office Action Summary**

Application No.

10/712,574

Applicant(s)

RUCH ET AL.

Examiner

Michael J. Araj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/9/05, 11/13/03</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

The response to election/restriction mailed on May 16, 2006 been withdrawn. A non-final action follows on pending claims 1-36:

***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to indicate reference number 75 "bolt" in Figure 3 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2, 3, 18, 22, 23, 29 and 30 are rejected under 35 U.S.C. 101 because they are drawn to non-statutory subject matter.

In claim 2, line 2, applicant positively recites part of a human, i.e. "attached to a human radius".

In claim 2, lines 3-4, applicant positively recites part of a human, i.e. "embedded in a human's ulna".

In claim 3, line 2, applicant positively recites part of a human, i.e. "attached to a human radius".

In claim 3, lines 3-4, applicant positively recites part of a human, i.e. "embedded in at least one metacarpal bone of a human".

In claim 18, line 2, applicant positively recites part of a human, i.e. "embedded in a bone".

In claim 22, line 2, applicant positively recites part of a human, i.e. "attached to a radius bone".

In claim 23, lines 2-3, applicant positively recites part of a human, i.e. "attached to at least one metacarpal bone of a human".

In claim 29, line 7, applicant positively recites part of a human, i.e. "coupled to a radius of a human".

In claim 30, line 7, applicant positively recites part of a human, i.e. "coupled to a radius of a human".

A claim directed to or including within its scope a human is not considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. In re Wakefield, 422 F.2d 897, 164 USPQ 636 (CCPA 1970).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Orsak (U.S. Patent No. 5,683,389).

Orsak discloses an apparatus that can be made with plastic comprising a first clamp (75) assembly operable to removably mount to an external fixator (83) and couple to a connector rod (15) as well as including a second clamp (25) assembly operable to releasably couple to at least one bone pin (26) embedded in a bone. The connector rod is operable to join the first clamp assembly to the second clamp assembly (see Fig 8). The external fixator is attachable to a human's radius and the second clamp is coupled to a bone pin that is embeddable to at least one metacarpal bone of a

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human. The first clamp assembly comprises an assembly clamp operable to attach to a longitudinal member (84) of an external fixator (83) and a clamp assembly head (77) operable to secure the assembly clamp and a connector rod fastener (81). It also comprises a U-shaped bracket (75) operable to attach to a rod (17). The second clamp assembly comprises a fastener (35) operable to releasably engage at least one bone pin embedded in a bone and operable to releasably hold the connector rod and clamp assembly head. The second clamp assembly is also rotatable with the use of an additional external fixator as seen in Figure 11. The apparatus is positioned to reduce bony fragments and maintain bony fragments in position. The rod comprises a first end operable to slidably attach to the first assembly clamp and a second end having a body operable to engage the second assembly clamp. The head of the second clamp assembly is deemed circular because it has an oval like appearance from the side profile that has a central opening where the rod can be engaged.

Orsak also discloses a method of maintaining a humans's wrist in a healing position comprising attaching an external fixator to the radius bone of a wrist, releasably attaching a first clamp assembly to the external fixator, releasably attaching a second clamp assembly to at least one bone pin embedded in a bone of a human and joining the first clamp and second clamp assembly with a connector rod. This device will limit the degree of supination and pronation of a human's radius and ulna bones by positioning the clams and connector rods relative to the human's radius and ulna bones by the way it is attached to the human bone of the radius bone and metacarpals.

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**Conclusion**

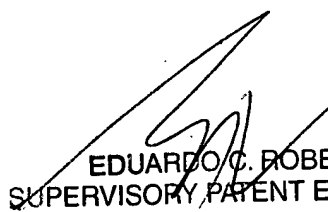
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
MJA

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER